

IN THE HIGH COURT OF DELHI AT NEW DELHI

CM(M) No.386/2001

National Insurance Company Ltd. Petitioner
! through: Ms.Shantha Devi Ramam, Advocate,

VERSUS

\$ Sh.Rajesh Verma & Ors. Respondents
^ through: Mr.B.K.Pandey, Adv. for R-1 to 5
Mr.S.K.Srivastava, Adv. for R-6 & 7

MAC.APP.No.210/2004

National Insurance Company Ltd. Appellant
! through: Ms.Shantha Devi Ramam, Adv.

VERSUS

\$ Sh.Rajesh Verma & Ors. Respondents
^ through: Mr.B.K.Pandey, Adv. for R-1 to 5
Mr.S.K.Srivastava, Adv. For R-6 & 7.

RESERVED ON : 21-05-2007

% DATE OF DECISION: 24-05-2007

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether judgment should be reported in Digest?

: **PRADEEP NANDRAJOG, J.**

1. A short point arises for consideration in the above captioned petition and appeal.

2. For record, it may be noted that interim award under Section 140 of M.V.Act,1988 has been challenged in CM(M) No.386/01. In MAC.APP.No.210/04, the main award has been challenged.

3. Challenger is the National Oriental Insurance Company Limited. The challenge is predicated on the same ground.

4. It is urge that the liability fastened upon the appellant under the interim award as well as the final award is contrary to law for the reason, before the accident took place, the policy of insurance had been revoked for the reason, cheque tendered by the insured towards premium was dishonoured and notice of cancellation of policy was served upon the insured.

5. Insured, respondent No.7, has taken a stand that after he learnt about the premium cheque being dishonoured, he paid the premium in cash.

6. View taken by the learned Judge MACT is that once the policy of insurance is issued, the insurance

company has to satisfy the award in favour of the third parties.

7. The date of accident is 25.5.1999.

8. The policy of insurance as also the cover note have been issued on 9.2.1999.

9. The cover note is Ex.P2W1/A. Certificate of insurance as also the policy is Ex.P2W1/B.

10. Testimony of R3W1, Shri R.K.Sharma, Branch Manager is to the effect that inadvertently the certificate and policy of insurance was issued simultaneously when cover note was issued. He stated that the cheque towards premium in the sum of Rs.5,931/- received on 9.2.1999, when sent for encashment was returned by the bank of respondent No.3 vide return memo Ex.R3W1/A. He further deposed that notice dated 26.3.1999, Ex.R3W1/B, was sent and served upon the insured informing that due to cheque towards premium being dishonoured, policy issued, being policy No.6337339 stood cancelled.

11. The insured, who appeared as RW-2/1, admitted that the cheque towards premium was dishonoured but denied that the insurance company ever intimated him about cheque being dishonoured. He stated that he had

gone to the insurance company on his own after about a month. He learnt about the dishonour of the cheque. He stated that he paid the premium in cash and thereafter, the insurance policy was issued to him.

12. It would be relevant to note that the cover note and the certificate of policy, Ex.R2W1/A and R2W1/B, were produced by Harbhajan Singh i.e. insured and were proved by him.

13. Harbhajan Singh has not produced any receipt evidencing cash payment of the premium. His version that the policy was issued to him after he paid the premium in cash is belied from the fact that the policy produced by him, Ex.R2W1/B covers the risk period 10.2.1999 to 9.2.2000 and has been issued on 9.2.1999.

14. Thus, there is no other policy issued a month after 9.2.1999 as claimed by Harbhajan Singh.

15. Further, notice of cancellation of the policy Ex.R2W1/B dated 26.3.1999 refers to the policy which is cancelled as policy number 6337339 i.e. Ex.R2W1/B.

16. Thus, viz-a-viz the insured, it is an obvious case where the insurance company is not answerable to the insured.

17. Question, however, arises whether the insurance company is liable to satisfy the award viz-a-viz third parties.

18. I need not note various authorities on the point for the reason, in a decision dated 23.4.2007, in MAC.APP.No.259/2004, Oriental Insurance Company Ltd. Vs. Vinod Kumar & ors. a learned Judge of this Court, S.Khanna, J. after noting a few authorities on the point has returned a finding as under :-

“A certificate of insurance once issued will have over-riding effect, notwithstanding any other law being in force, and the insurance company shall be liable to indemnify all the persons or, class of persons specified in the policy irrespective of the fact that the insurance company is entitled to avoid or cancel the policy or has already avoided and cancelled the policy. Once certificate of insurance has been issued, then liability under Section 149(1) of the Act towards third parties on behalf of the insurance company exists notwithstanding the fact that the insurance policy has been cancelled or is liable to be cancelled.”

19. In the decision reported as 2000 (1) JCLR 953, New India Assurance Company Ltd. Vs. Rula & Ors. in para 9 of the report, Supreme Court observed as under :-

“9. Thus, any contract of insurance under Chapter 11 of the Motor Vehicles Act, 1988 contemplates a third party who is not a signatory or a party to the contract of insurance but is,

nevertheless, protected by such contract. As pointed out by this court in *New Asiatic Insurance Co. Ltd. Vs. Pessumal Dhannamal Aswani & Ors.*, AIR 1964 SC 1736, the rights of the third party to get indemnified can be exercised only against the insurer of the vehicle. It is thus clear that the third party is not concerned and does not come into the picture at all in the matter of payment of premium. Whether the premium has been paid or not is not the concern of the third party who is concerned with the fact that there was a policy issued in respect of the vehicle involved in the accident and it is on the basis of this policy that the claim can be maintained by the third party against the insurer."

20. The appeal and the petition are accordingly disposed of directing the National Insurance Company Ltd. to satisfy the interim as well as the final award in favour of the claimants. However, recovery rights are granted to the insurance company to recover the amount paid pursuant to the two awards from the insured.

21. I notice that pursuant to the interim orders passed in the petition and the appeal, the sum covered by the interim as well as the final award has been deposited by the insurance company. It is not clear whether the deposit is in this court or with the Tribunal. It is accordingly directed that wheresoever the deposit has been made, the amount would be disbursed in terms of the interim and the final

award.

22. No costs.

23. LCR be returned.

May 24, 2007
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PRADEEP NANDRAJOG, J.

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: **PRADEEP NANDRAJOG, J.**
For orders, see CM(M) No.386/2001.

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